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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re J.C., a Person Coming Under the
Juvenile Court Law.

H048785
(Santa Cruz County
Super. Ct. No. 20JU00225RR)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

D.S. and M.S.

Defendants and Appellants.

Appellants D.S. and M.S. (appellants), former de facto parents of minor child J.C. (the child), seek review of a juvenile court order granting them partial access to records pursuant to Welfare and Institutions Code section 827.¹ Appellants contend the court committed multiple errors when it failed to fully grant their request, including failing to consider appellants' legal arguments and authorities, failing to afford appellants the same procedural rights as a parent or guardian, making erroneous factual findings, abusing its discretion by failing to rule on several of appellants' requests, and determining there was no legitimate basis for appellants' request for communications between judicial officers.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

Based on established principles of appellate review, we find no error, and affirm the juvenile court's order.

I. BACKGROUND

Appellants' request for juvenile court records arises from a dependency proceeding in which the Family and Children's Services Division of the Santa Cruz County Human Services Department (the Department) placed the child with appellants as foster parents. The Department later decided to place the child with a different family. Appellants filed an application for de facto parent status to obtain the right to present evidence in the juvenile proceedings.² Appellants also filed multiple grievances with the Department regarding the management of the child's foster placement, proceeded to an administrative hearing with the Department, and filed a subsequent claim with Santa Cruz County. Appellants alleged that when Department employees decided to place the child with a different family, they violated the law, violated appellants' rights under the United States and California Constitutions, and "violated the applicable ethics rules."

Appellants filed a section 388 petition³ in juvenile court, seeking to remove the Department's authority over the child. Despite appellants' efforts, which the juvenile court described as including "a 12-day trial, writs, appeals and efforts to disqualify four different judges – via five separate challenges during 2020," the child was ultimately

² " 'De facto parent' means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period." (Cal. Rules of Court, rule 5.502(10).)

³ "Any parent or other person having an interest in a child who is a dependent child of the juvenile court or a nonminor dependent as defined in subdivision (v) of Section 11400, or the child or the nonminor dependent through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court. . .for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a)(1).)

placed with his presumed father, after which the dependency matter was dismissed in November 2020, when the presumed father completed Family Maintenance.

A. Appellants' Petition for Access to Records

In October 2020, appellants filed the subject petition for access to the juvenile case file (the 827 petition), seeking access to 11 categories of records: “The complete records related to de facto parents’ Section 388 Petition filed on or about August 14, 2019, including all hearing dates from August 20, 2019 through October 7, 2019, inclusive[]”; “The complete records related to de facto parents’ administrative hearing before the Department of Human Services held on or about August 14, 2019[]”; “The complete records related to hearings, and/or findings and orders issued (and/or filed) on [multiple dates], and all future hearings before the Juvenile Court[]”; “The complete records related to de facto parents’ Section 388 Petition, and related documents filed on May 8, 2020[]”; “The complete records related to the next review hearing scheduled on or about November 28, 2020[]”; “All juvenile records prepared for any appeal relating to this case[]”; “All ex parte communications relating to this case between any judge assigned to this case at any time and any other person outside the presence of de facto parents or their counsel[]”; and, “All communications relating to this case, or relating to any of the parties in this case,” between four specified judges during periods when those judges were disqualified from hearing the matter, or during the pendency of appellants’ objection to the specified judge.⁴ The subject petition was the last of several such requests filed by appellants with the juvenile court.

In the 827 petition, appellants included a chronology of alleged malfeasance by the Department and the courts. Appellants asserted that they needed access to the

⁴ The Department alleged that the first 827 petition filed by appellants was not properly noticed. Appellants thereafter refiled the 827 petition after giving appropriate notice as required by the statute. The two petitions appear identical in substance. We treat the second filed petition as the operative petition for purposes of this appeal.

requested records in order to “bring all legitimate views, evidence, and interests before [the juvenile court] for consideration in determining detriment to the child, as well as determining other issues within its jurisdiction,” and “to exercise their constitutional rights, *inter alia*, to due process, to equal protection, and to petition for redress of grievances by the county and/or by [the juvenile court]. This includes, without limitation, their existing and potential claims for legal and/or ethical violations” against six named superior court judges and 11 county employees. (Internal fn. omitted.)

Appellants argued that, as de facto parents with a right to present evidence at a review hearing under California Rules of Court, rule 5.534(a), they required access to the requested records in order to properly proceed at the dependency review hearing scheduled in November 2020.⁵ They also argued that the public policy of confidentiality of juvenile proceedings should yield to appellants’ constitutional rights, that the law authorized use of the records in connection with civil proceedings and that the records were necessary to prosecute three pending appeals related to the underlying juvenile matter, as well as a petition for writ of mandate pending in the trial court. In addition to the already pending or potential claims, appellants argued that they required access to the records to protect the child from the presumed parent, that it would be detrimental to the child to remain in the presumed parent’s care, and that if they prevailed on appeal, the records would be relevant to their efforts to provide care for the child, which would further the child’s best interests.

The Department, the presumed parent, and the attorney appointed to represent the child in the juvenile proceedings objected to the release of records from the juvenile case file. Both the presumed parent and the child’s counsel contended that it was not in the child’s best interest for appellants to have access to the requested records, and that such access would not benefit the child in any way. The Department contended that the

⁵ Undesignated references to rules of court are to the California Rules of Court.

request was overly broad, seeking information irrelevant to the subject matter of any of appellants' pending claims. The Department argued that the court should consider appellants' alleged release of confidential information in a civil lawsuit and to the press. Citing rule 5.552(b), the Department suggested that appellants did not provide sufficient information justifying their need to access the requested records.

Before the juvenile court ruled on the 827 petition, the court dismissed the juvenile dependency case involving the child, "following successful completion of Family Maintenance," and the child was returned to his presumed parent.⁶ Appellants' status as de facto parents was discharged by operation of law.

B. The Juvenile Court's Order on the 827 Petition

The juvenile court ruled on the 827 petition in November 2020, partially granting the request "[a]fter a review of the juvenile case file and review of any filed objections. . . ." "Given the proof burden required of them," the court described appellants' requests as "dramatically overbroad, and completely unjustified." The court recognized that it was "required to weigh and balance the significant privacy rights of the minor child against the interests of his former de facto parents, whose interest in the records is for reasons largely unrelated to his well-being." (Italics omitted.) It recognized appellants' due process rights, noting that those rights were not equivalent to those of other parties in the dependency proceedings.

Because appellants had been allowed to attend and participate in court proceedings prior to the dismissal of the dependency action, the juvenile court determined that they

⁶ The hearing was completed before the juvenile court issued its order on the instant section 827 petition on November 24, 2020. In its order, the juvenile court indicated that appellants had filed several previous section 827 petitions which were decided by the court's order on August 4, 2020. The court was unaware that appellants had filed a subsequent petition. On receipt of an order from this court that the juvenile court rule on the pending section 827 petition, the juvenile court issued the order that is the subject of the appeal here.

should be allowed to receive “the documentation generated as a result of those proceedings, both in terms of the clerk’s transcript and with regard to the reporter’s transcript - prepared to memorialize all discussions on the record during the proceedings to which they were privy.” The court further indicated that the juvenile court had previously ordered the release of documents during the trial from August 20, 2019, through October 7, 2019, and that appellants’ counsel already possessed “the requested materials from the referenced administrative hearing, and also received the other now-requested documents from the court during and related to the conduct of the 12-day trial.”

With respect to the specifically enumerated requests in the 827 petition, the juvenile court ordered the release of the orders requested by appellants for specific dates. However, the court found that it did not issue an order on March 25, 2020, and that the request for orders related to future hearings was moot as the case had been dismissed. Although appellants asked for records related to a hearing set November 28, 2020, the court found there was no such hearing scheduled.

Regarding appellants’ May 2020 section 388 petition, the court determined that appellants already possessed “their own papers and filings.” The order does not explicitly address the release of any additional records related to that petition. With respect to appellants’ request for any reports prepared by the Department, the juvenile court found pursuant to rule 5.534(k)(3) that appellants were entitled to receive “the social worker’s summary of recommendations for disposition, and any recommendations for change in custody and status” for any dispositional hearing. Although counsel for the Department represented that the Department provided appellants with excerpted portions of the reports for each dispositional hearing, the court ordered the Department to “confirm that each and every such excerpt has been provided to [Appellants].” With respect to appellants’ request for communications by or to the judges who had handled the case in 2020, the court found no “legitimate basis nor any legal requirement” to

release such information. Finally, the court ordered that appellants were entitled to the “court reporters’ transcripts for any hearings that they/their counsel attended.”

The court set forth a procedure by which appellants could access the records to which they were entitled. It also issued a protective order specifying how the records could be used. The court did not enumerate each document and reporter’s transcript to which appellants were entitled.

Appellants timely noticed this appeal from the November 2020 order ruling on the section 827 petition. (Rule 8.104(a)(1).) Such an order is appealable as a final judgment in a special proceeding. (*Pack v. Kings County Human Services Agency* (2001) 89 Cal.App.4th 821, 826, fn. 4.)

C. Order Settling the Record and Supplemental Briefing

Appellants separately appealed several orders related to the dependency proceedings (appeal Nos. H048081, H048305, H048495, and H048740, referred to collectively as H048081). Appellants contended below and assert in the instant appeal that one basis for their section 827 petition is their need for information to effectively prosecute those appeals from the dependency case.

In response to appellants’ complaints regarding the status of the record in the appeals from the dependency proceedings, and because of attendant delay in the commencement of briefing, this court returned those matters to the juvenile court for the court to settle the record regarding appellants’ access to documents and reporter’s transcripts under the November 2020 order on the section 827 petition that is the subject of the appeal now before us.⁷ In doing so, this court authorized the juvenile court to hold “any and all proceedings necessary to expressly enumerate in detail the documents and

⁷ Pursuant to this court’s order settling the record, the juvenile court prepared and filed a new, combined record for these four appeals, which are being considered together. On our own motion, we take judicial notice of the combined record, as filed in appeal number H048081.

transcripts which appellants may access from the juvenile records in case number 19JU00111, by setting forth the name and date of each and every document and transcript appellants may access.”

In an order issued in November 2021, the juvenile court directed appellants and the Department to file letter briefs including “a categorical description of the records that should and should not be (have been) provided to appellants, making reference to any changes - due to changes in status of appellants - throughout the pendency of the litigation.” The court included detailed instructions for the Department to identify any court reporter transcripts, minute orders, social worker reports, or other pleadings that should be withheld from appellants. It also required the Department to identify all social worker reports it provided to appellants, including those provided in redacted form. Similarly, the court ordered appellants to identify each document “which they contend that they know to exist, but which were not provided to them, which they believe should be provided as part of the record on appeal,” and to provide factual and legal authority in support of their contentions. The court directed appellants to identify all redacted documents which they received for which they believed they should receive an unredacted or less redacted version. The court set a hearing for December 2021 and ordered counsel for appellants and the Department to appear in order to respond to questions from the court. The court served the order on all involved parties, including the Department and appellants’ attorney.

The Department submitted a letter brief with a list of pleadings indicating whether or not the pleadings had previously been provided to appellants. Appellants did not submit a letter brief and neither appellants nor their attorney appeared at the hearing as ordered. The juvenile court found that appellants and their attorney received notice “as required by law.”

At the hearing, the juvenile court directed the Department to “verify, and if necessary, re-file any supplemental materials that [appellants] were entitled to receive in

anticipation of” the October 2019 dispositional hearing and the January 2020 six-month review hearing. The Department provided the additional materials, after which the juvenile court issued an order settling the record.

In its written order settling the record, the juvenile court judge stated that he “personally confirmed the mailing address for appellants’ counsel” in preparing the order directing the parties to file letter briefs and appear at the December 2021 hearing.⁸ The court did not receive “any form of communication or transmittal from appellants or their lawyers in conjunction with the [November 2021] order. . . .” The court confirmed that it reviewed the entire juvenile court docket, the prior juvenile court briefings and orders, a motion to augment filed by appellants with this court, and the opening and responsive briefs filed by appellants and the Department in the instant appeal. Based on its review, the court determined that numerous items it had intended appellants to receive under the November 2020 order had not been produced, stating, “It was the intent of this judicial officer that appellants be provided with all materials generated by the court in conjunction with court proceedings attended by appellants or their attorneys. . . . Those omissions have now been rectified by this order and from the record that is now being assembled.” The court attached to its order an eight-page list identifying each document to be included in the new, combined record. The juvenile court also issued a notice to court reporters directing the transcription of 30 hearing dates.

In February 2022, the juvenile court issued a supplemental order including in the combined record four additional documents submitted by the Department prior to the issuance of the December 2021 order.

After the juvenile court filed the new, combined record in appeal number H048081, this court vacated submission of the instant appeal, and directed the parties to file supplemental briefing “addressing whether the record in H048081, filed after this

⁸ The juvenile court had the November 2021 order served on appellants’ counsel at the same address he provided on the briefs filed in this appeal.

appeal was taken under submission, renders the instant appeal moot. In their briefing, the parties shall address the orders settling the record, as well as the effect, if any, of appellants' failure to participate in the proceedings held by the trial court to settle the record." Appellants and the Department filed letter briefs pursuant to this order, after which we took the matter under submission.

II. DISCUSSION

A. The Order Settling the Record did not Render this Appeal Moot

We begin by addressing whether the December 2021 order settling the record in appeal number H048081 renders this appeal moot. Appellants contend that the appeal is not moot and that this court issued the order to settle the record in appeal number H048081 in lieu of considering the merits of the instant appeal. Appellants thus request that we modify the order settling the record in appeal number H048081 to conform to their challenges in the instant appeal, or "rehear" this appeal.

We deny appellants' requests. As the juvenile court noted in the December 2021 order, the order settling the record did not issue in, or address, the appeal before us. It was designed to expedite the briefing in appellants' appeals of the dependency proceedings. We ordered supplemental briefing here in order to determine the effect, if any, of the juvenile court's order settling the record with respect to the dependency appeals on the issues now before us. The juvenile court, in settling that record, clarified what records had been ordered released under section 827, thus raising the question of whether appellants' challenges here are moot.

The Department concedes that the orders settling the record did not "necessarily" render this appeal moot. Because appellants effectively sought all records related to the child and the juvenile court proceedings, this court can still provide appellants the relief requested in the appeal despite the juvenile court's order specifying the records appellants are entitled to, as there are records the juvenile court did not authorize appellants to access. However, the Department argues that appellants forfeited or waived any rights

they have in access to the records by failing to participate in the proceedings to settle the record as ordered by the juvenile court. As a result, the Department contends that appellants cannot argue error arising from the December 2021 hearing, or the resulting order settling the record. Because the record is settled, the Department claims that this court cannot provide any additional relief to appellants regarding their access to the child's juvenile court records.

As we will discuss later in this opinion, appellants' failure to participate in the proceedings to settle the record in appeal number H048081 is not without consequence. However, we disagree that the consequence is complete forfeiture of the ability to argue that the juvenile court erred in issuing the November 2020 order on the 827 petition. In settling the record in December 2021, the juvenile court did not rescind its previous finding that the 827 petition was overbroad and unjustified, or otherwise correct any purported errors alleged by appellants. Rather, the court revisited which pleadings, social worker reports, and hearing transcripts fell within its November 2020 order and thus created a record accessible to the parties in the dependency appeals. Appellants elected not to participate in the proceedings related to that determination, and we will take that into account in addressing the appeal from the section 827 order as it pertains to certain of the juvenile court's factual findings. (See § 2.E., *post.*) Otherwise, we conclude appellants did not forfeit their arguments by failing to participate in those proceedings. We thus turn to appellants' substantive arguments.

B. Section 827 and the Standard of Review on Appeal

We commence our analysis with the law governing access to juvenile court records. The Legislature has expressly stated that "juvenile court records, in general, should be confidential." (§ 827, subd. (b)(1).) "Thus, section 827 restricts access to the case file in a juvenile proceeding. That section lists persons entitled to inspect the file without a court order, and a smaller number of persons who are also entitled to receive copies of the file without a court order. (§ 827, subd. (a), (5); rule 5.552(b)(1).)" (*In re*

B.F. (2010) 190 Cal.App.4th 811, 818.) Although de facto parents have standing to petition the juvenile court to inspect or copy the case file, they are not included in section 827 as persons who are entitled to do so without a court order. (§ 827, subd. (a)(1); rule 5.552(b)(3), (c); *In re B.F.*, at p. 818.)

The petitioner must identify “[t]he specific records sought” and “describe in detail the reasons the records are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the records.” (Rule 5.552(c).) The petitioner seeking access to the records bears the burden to show good cause justifying such access. (Rule 5.552(d)(1), (2).) “[I]f the court determines that there may be information or documents in the records sought to which the petitioner may be entitled, the juvenile court judicial officer must conduct an in camera review of the juvenile case file and any objections and assume that all legal claims of privilege are asserted.” (Rule 5.552(d)(3).)

To determine whether to grant the petition, the court “must balance the interest of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interest of the public.” (Rule 5.552(d)(4).) “[T]he court must find that the need for access outweighs the policy considerations favoring confidentiality of juvenile case files” to grant the petition. (Rule 5.552(d)(5).) If the petitioner shows by a preponderance of the evidence that the requested records are “necessary and have substantial relevance to the legitimate need of the petitioner,” the court may grant access to the case file “only insofar as necessary.” (Rule 5.552(d)(6).)

On appeal, we consider the juvenile court’s order based on established principles of appellate review. “Generally, a juvenile court has broad and exclusive authority to determine whether and to what extent to grant access to confidential juvenile records pursuant to section 827. [Citations.] Review of a juvenile court’s decision to release juvenile records under section 827 is for abuse of discretion. [Citations.]” (*In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1541.) A court abuses its discretion when, in exercising

such discretion, it exceeds the bounds of reason, considering all of the circumstances before it. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566 (*Denham*).) Appellants bear the burden of establishing an abuse of discretion; this court will not substitute its opinion for that of the juvenile court and divest the juvenile court of its discretionary power unless appellants show a clear case of abuse. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331; *Denham*, at p. 566.) We presume that the juvenile court's order is correct. Appellants bear the burden to demonstrate, based on the record presented to this court, that the juvenile court committed an error. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609 (*Jameson*).) We review the correctness of the order at the time of its rendition, based on the record that was before the juvenile court for its consideration, disregarding alleged facts in the briefs on appeal which are not contained in the record. (*Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 628.)

C. The Juvenile Court did not Err in Concluding that Appellants' Request Was Overbroad or Unjustified

Appellants argue that the juvenile court erred in finding that the 827 petition was “dramatically overbroad, and completely unjustified,” as they sought access to the juvenile records to exercise their constitutional rights, petition for redress of grievances, and “bring all legitimate views, evidence and interests before the juvenile court.” We conclude appellants have not demonstrated any abuse of discretion that compels reversal.

1. The Juvenile Court Considered the Merits and Balanced the Competing Interests

Appellants first contend that the juvenile court erroneously found that their request for access to records was overbroad, alleging that the juvenile court did not consider the merits of the 827 petition in connection with appellants' need for the records to prosecute their claims against various county employees, and that the court did not balance the competing interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interest of the public.

The record belies appellants' claim. Rule 5.552 provides that, "If, after in camera review and review of any objections, the court determines that all or a portion of the juvenile case file may be accessed, the court must make appropriate orders, specifying the information that may be accessed and the procedure for providing access to it." (Rule 5.552(d)(7).) The juvenile court complied with this rule when it issued the order granting the 827 petition. The court used the mandatory form created by the Judicial Council to rule on the petition; it checked the box indicating that it granted the request, "After a review of the juvenile case file and review of any filed objections," finding that appellants had "shown by a preponderance of the evidence that access to records is necessary and that records have substantial relevance to the legitimate needs of the petitioner. The court has balanced these needs with the child's best interest. The court finds that the need for access outweighs the policy considerations favoring confidentiality of juvenile records." The order itself states that the court engaged in the balancing test required by law. The fact that the juvenile court determined that the balance of interests did not favor release of the juvenile court file *in toto* to appellants is not evidence of error.

Appellants further argue, "Apart from the Order's recitation of the rule that the court is required to weigh and balance [the interest of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interest of the public] [citation], nothing in the record indicates that the court ever affirmatively did so. As a result, this Court is asked to *assume* that the Juvenile Court's inclusion of this rule in its Order *implies* that the court *must have* weighed and balanced the competing interests." To the extent that appellants are frustrated that the juvenile court did not explain its rationale more fully, rule 5.552 does not require the juvenile court to provide a statement of decision in ruling on an 827 petition; the court is not required to provide a written discussion of the law or explain its findings.

More importantly, appellants misapprehend the law governing appellate review, which requires that we assume that the juvenile court engaged in the weighing and balancing process required under section 827 and rule 5.552, subdivision (d)(4), unless appellants demonstrate otherwise through evidence in the appellate record. “ ‘A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.’ [Citations.]” (*Denham, supra*, 2 Cal.3d at p. 564.)

Appellants argue that the juvenile court’s statement that appellants’ “interest in the records is for reasons largely unrelated to [the child’s] well-being,” demonstrates that the court did not fully consider their petition. They claim they made clear arguments that they needed the records to support the child’s best interest. But although the 827 petition asserted some reasons that appellants’ access to the records could advance the interests of the child’s best interest, much of appellants’ request focused on ways that access to the files would aid them in advancing claims and grievances against the Department and other agencies in civil litigation that might or might not inure to the benefit of the child, notably, its litigation against the Department and the County of Santa Cruz for damages. The juvenile court’s statement itself demonstrates that the court undertook the balance of interests as required by law.

Appellants rely on *In re Anthony H.* (2005) 129 Cal.App.4th 495 (*Anthony H.*) to argue that the attachment of their claim against certain county employees to the 827 petition was sufficient to compel access to the juvenile court records. They further note, “[w]ithout possession of the juvenile court file it would be difficult to list the documents in detail or know which documents would be useful or relevant in supporting [their] claims.”

We distinguish *Anthony H.* from the case before us. There the plaintiff, a grandmother seeking de facto parent status in a juvenile dependency proceeding, filed several 827 petitions in order to obtain records she believed were necessary to prosecute a federal civil action she brought alleging that her state and federal constitutional rights to due process and equal protection had been violated during the dependency proceedings. (*Anthony H.*, *supra*, 129 Cal.App.4th at pp. 498-500.) The juvenile court at first attempted to delegate the review to the federal court judge, who denied the request after finding that the juvenile court had exclusive authority under section 827. (*Id.* at pp. 500-501.) The juvenile court thereafter summarily denied plaintiff's third 827 petition "on the ground the 'matter [was] already released and reviewed by Federal Court Judge.'" (*Id.* at p. 501.)

The appellate court found the juvenile court erred in denying the final 827 petition because it ruled on procedural grounds, rather than considering the petition on the merits. (*Anthony H.*, *supra*, 129 Cal.App.4th at pp. 501, 503-504.) The appellate court addressed the specificity of the plaintiff's petition, as the defendants argued that it "did not sufficiently itemize the requested documents." (*Id.* at p. 505.) "[The plaintiff's] list of documents was sufficiently specific and it was clear why [the plaintiff] needed [the child's] juvenile dependency records. [The plaintiff was] suing the [defendants] for mishandling [the child's] juvenile dependency case. . . . [The plaintiff] claimed [she] needed to review and use as evidence the confidential juvenile dependency records to prosecute [the] case. Without them, it would be extremely difficult to determine whether there had been any wrongdoing, and if so, to prove it." (*Ibid.*) However, the appellate court did not find that the plaintiff was entitled to receive all of the requested records simply because she specified why she needed them. Rather, the court remanded the matter to the juvenile court so it could balance the competing interests and determine what records, if any, should be released to the plaintiff under section 827. "[T]he juvenile court never reached the merits of the parties' disclosure petitions and thus there

was no balancing of the competing interests. The juvenile court, not [the appellate] court, is in the best position to do so. It is not appropriate for this court to second-guess what the juvenile court's determinations and findings might have been had the juvenile court balanced [the child's] privacy interests against [the plaintiff's] competing interests in prosecuting her federal action. (*Id.* at p. 506.)

In contrast to the facts in *Anthony H.*, here the juvenile court reached the merits of appellants' disclosure petitions and balanced the competing interests as required by law. The November 2020 order indicates that the juvenile court found that appellants demonstrated that the records were substantially relevant to their legitimate needs. It weighed appellants' needs against the child's best interest and found that appellants' need for access to many of the records outweighed the policy considerations favoring confidentiality of the records. The juvenile court here did exactly what the *Anthony H.* court indicated the juvenile court failed to do in that case, and thus does not assist appellants.

Appellants further argue that the juvenile court did not consider any of the legal arguments or legal authority provided in support of their 827 petition, claiming the court "completely ignore[d]" relevant bodies of law. Appellants contend that the juvenile court erred by failing to rule that their right to confront and cross-examine adverse witnesses in civil proceedings necessarily supersedes any right to confidentiality in the requested records. In support of this argument, appellants rely on *In re Keisha T.* (1995) 38 Cal.App.4th 220, 231 (*Keisha T.*) and *J.E. v. Superior Court* (2014) 223 Cal.App.4th 1329, 1335-1336, 1339 (*J.E.*).

Appellants' reliance on these authorities is unavailing. Neither case supports the proposition that the right to confront and cross-examine witnesses in a civil proceeding mandates the inspection of juvenile records under section 827. In *Keisha T.* the appellate court reversed a juvenile court order that released certain information from the dependency records of 10 minors to a newspaper, concluding that the juvenile court

employed an improper procedure to implement the order. (*Keisha T.*, *supra*, 38 Cal.App.4th at pp. 239-241.) The court declined to read section 827 and other statutory authorities proffered by the minors as entirely prohibiting disclosure of juvenile records to the press. (*Id.* at pp. 233-239.) Rather, it determined that section 827 allowed the juvenile court discretion to grant the press access to material in juvenile court records, if the juvenile court properly exercised that discretion and followed the requisite procedure. (*Id.* at pp. 238-239.) Recognizing that in general, juvenile courts should be confidential and that the public policy of confidentiality governs juvenile proceedings, the court stated that section 827 reflects that “juvenile court records are confidential, but not absolutely so. . . .” (*Id.* at p. 231.)

The appellate court noted, “The juvenile court, which is in the best position to determine whether disclosure is in the best interests of the minor, has been vested with ‘exclusive authority to determine the extent to which juvenile records may be released to third parties.’ [Citation.] Confidentiality cannot always be honored. For example, where the principle of confidentiality conflicts with a defendant’s constitutional rights of confrontation and cross-examination, it must give way. [Citation.] . . . [¶] . . . [¶] . . . [T]he cloak of confidentiality must fall to the rights of a criminal defendant to mount a defense. [Citations].” (*Keisha T.*, *supra*, 38 Cal.App.4th at pp. 231-232.) *Keisha T.*’s discussion of the competing priorities of section 827 and the constitutional rights under the Sixth Amendment to the United States Constitution to confront and cross-examine witnesses and to present a defense in a criminal trial is not helpful to appellants as they urge the disclosure of the records to advance their civil claims.

However, the court in *Keisha T.* also considered multiple instances in which requests for confidential records were filed under section 827 for use in a civil action, including a dependency proceeding. Based on the precept that the juvenile court’s exercise of discretion is entitled to deference, the court concluded that “[t]hese cases indicate there may be situations in which competing interests require the disclosure of

some material in a juvenile court record. They all recognize it is the juvenile court that is in the best position and statutorily authorized to make the decision of whether and what material should be released.” (*Keisha T.*, *supra*, 38 Cal.App.4th at p. 233.) The court focused on the procedure the juvenile court must follow in order to “effect the proper balancing that must occur and to protect the interests of the minors. . . .” (*Id.* at p. 239.) *Keisha T.* thus reinforces the principle that the juvenile court is best situated to determine when the release of juvenile court records to a third party is appropriate. It does not, as appellants suggest, mandate the release of records for the purpose of advancing a civil action. Consistent with the precepts discussed in that opinion, the juvenile court here followed the lawful procedure to determine what records appellants could access.

Appellants’ reliance on *J.E.* is similarly flawed. In *J.E.*, a minor challenged the juvenile court’s refusal to exercise its authority to review a juvenile file under section 827 for exculpatory or impeachment evidence material to the minor’s defense in a juvenile justice adjudication. The appellate court determined that, “when a petitioner files a section 827 petition requesting that the court review a confidential juvenile file and provides a reasonable basis to support its claim that the file contains *Brady*⁹ exculpatory or impeachment material, the juvenile court is required to conduct an in camera review.” (*J.E.*, *supra*, 223 Cal.App.4th at pp. 1333, 1338.) The appellate court reaffirmed that, “Under section 827 the juvenile court has ‘exclusive authority to determine whether and to what extent to grant access to confidential juvenile records’ to unauthorized persons. [Citation.] This statutory scheme reflects a legislative determination that the juvenile court has ‘both the “ ‘sensitivity and expertise’ to make decisions about access to juvenile records.” ’ [Citation.]” (*Id.* at p. 1337.) The juvenile court’s error was the failure to

⁹ *Brady v. Maryland* (1963) 373 U.S. 83 [requiring the prosecution in a criminal action to disclose exculpatory and impeachment evidence that is favorable to the accused and material on the issue of guilt or punishment in order to satisfy constitutional due process requirements].

conduct an in camera hearing and determine what material, if any, should be given to a criminal defendant under the constitutional principles of due process. But the juvenile court here conducted the in camera review and made its discretionary determination of what should be disclosed to appellants.

The cases cited by appellants reinforce the deference we are to give to the juvenile court's decision to release or withhold confidential juvenile court records. Neither the authorities cited by appellants nor the record demonstrate that the juvenile court here abused its discretion when it applied its expertise to determine that some but not all of the dependency court file could be released to appellants.¹⁰ For these reasons, we conclude that appellants have not demonstrated that the court disregarded the law, erred based on its finding that their request was overboard, or erred by failing to balance the relevant interests under the law when it issued its order providing them with partial access to materials in the confidential juvenile court file.

2. Appellants' Status as De Facto Parents Does Not Compel Reversal of the Juvenile Court's Order

As de facto parents, appellants assert that they should have been granted greater access to the juvenile records to facilitate their participation in the juvenile court proceedings as parties. We disagree.

The law makes clear that de facto parents do not have the same rights as natural parents, as recognized by the appellate court in the case appellants rely on to support their argument in this regard. (*In re Matthew P.* (1999) 71 Cal.App.4th 841, 850 (*Matthew P.*) ["de facto parents do not have all the substantive rights and preferences of legal parents or guardians..."].) "While de facto parents have 'standing to participate as parties' (rule

¹⁰ Appellants suggest the juvenile court was required to hold a hearing in addition to conducting an in camera review of the file. Rule 5.552(d) does not require the juvenile court to hold a hearing on a petition made under section 827. It provides the court discretion to set a hearing, but specifically sets forth a procedure for proceeding "[w]hether or not the court holds a hearing" (Rule 5.552(d)(2) & (3).)

5.534(e)), their role is limited and they do not enjoy the same due process rights as parents. ([Citations]; compare rule 5.534(e) [de facto parents may be present at the hearing, be represented by counsel and present evidence] with rule 5.534(k)(1)(B) [parents and children have the right to confront and cross-examine the social worker and other witnesses].) De facto parents do not have an automatic right to receive the Agency's reports and other documents filed with the court. (Cf. rule 5.534(k)(2)(A), (3) [parents and children have the right to receive Agency's reports and, '[u]nless prohibited by court order, . . . the right to receive all documents filed with the court']; rule 5.546(d)(6) [Agency's duty to disclose material and information, 'including results of . . . mental examinations,' to parents and children].)" (*In re B.F.*, *supra*, 190 Cal.App.4th at p. 818.)

Appellants rely on *Matthew P.*, wherein the de facto parents filed a section 388 petition seeking the return of two children to their care. The juvenile court denied the de facto parents' request to exclude the social worker's report from evidence unless they were provided the opportunity to cross-examine the social worker, and thereafter ruled on the pleadings without hearing testimony. (*Matthew P.*, *supra*, 71 Cal.App.4th at pp. 847-848.) The appellate court determined that the juvenile court violated the de facto parents' due process rights. (*Id.* at p. 851.) While the issue of access to confidential juvenile court records under section 827 was not an issue on appeal, the appellate court noted that " 'a failure to provide parents with a copy of the social worker's report, upon which the court will rely in coming to a decision, is a denial of due process.' [Citation.]" (*Id.* at p. 851.)

Matthew P. does not support appellants' contention that the juvenile court violated their due process rights as de facto parents when it issued its order in response to their section 827 request. The court in *Matthew P.* determined that the denial of the de facto parents' section 388 petition without hearing testimony that might counter the written recommendations of the social worker denied them a hearing compliant with principles of

due process. Here, the adjudication of appellants' section 388 petition is not before us. Further, the juvenile court ordered the Department to provide appellants with specific records relevant to the dispositional hearings in the dependency action, including the social worker's recommendations for disposition and any change in custody and status of the minor. To the extent that appellants now complain that the Department failed to comply with that order, such failure does not render the juvenile court's order improper. We conclude that appellants have not shown that the juvenile court's determination that their request for access was overbroad or unjustified violated their due process rights as de facto parents.

D. Appellants' Forfeited Their Arguments Concerning Alleged Errors in the Juvenile Court's Factual Findings

Appellants cite five factual findings the juvenile court made that they contend are not supported by substantial evidence. They further argue that the court's issuance of these findings constitutes an abuse of discretion. By failing to participate in the proceedings held by the juvenile court to settle the record relating to the November 2020 order on their 827 petition, appellants forfeited these arguments.

An appellate court ordinarily will not consider challenges based on erroneous rulings where the party could have raised an objection in the trial court but failed to do so. (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754.) "Dependency cases are not exempt from this forfeiture doctrine. [Citations.]" (*Ibid.*) This rule encourages parties to bring errors to the juvenile court's attention so that they may be corrected. (*Ibid.*)

Upon receiving this court's order to settle the record in appeal number H048081, the juvenile court afforded appellants the opportunity to identify all records they believed should have provided to them and/or included in the record in that appeal pursuant to the November 2020 order on their 827 petition. The court further ordered appellants' attorney to appear at a hearing, "to respond to questions from the court regarding the issues as framed in the letter briefs." Appellants elected not to provide a brief or to

appear at the hearing. In the supplemental briefing requested by this court, appellants allege that “such further proceedings by [the juvenile court judge] appear calculated to prevent Appellants from gaining access to the relevant juvenile records, and to cause Appellants unnecessary expense and delay.”

The juvenile court conducted the hearing consistent with this court’s order to conduct “any and all proceedings necessary to expressly enumerate in detail” which documents were accessible to appellants. This court’s order was designed to expedite appellants’ appeals in the dependency matters. Appellants raised no objection to the juvenile court’s order setting a hearing to settle the record, and provide no explanation for their lack of participation in the juvenile court proceedings, save that, “Appellants’ counsel mistakenly believed Respondent Judge would review Appellants’ 827 Petition and the related oppositions already on file, and specifically decide the requests in Appellants’ 827 Petition that he appeared to overlook in his November 24, 2020 Order.”

Appellants were granted the opportunity to address issues that were based on disagreements regarding the existence of hearing dates, as well as enforcement of the November 2020 order. Participating in these proceedings could have resolved most if not all of the arguments appellants raise on appeal regarding the court’s factual findings. Appellants claim the court erred in: determining that certain administrative hearing records were already in their possession; finding that the juvenile court did not issue an order on March 25, 2020; “misapprehend[ing] and fail[ing] to consider” their request for records relating to their May 2020 section 388 petition; implicitly finding that the Department complied with its obligation under rule 5.534(k)(3), requiring the Department to provide appellants with information regarding its recommendations for disposition and placement at least 10 days before a hearing; and finding that their requests for records relating to a review hearing scheduled on or about November 28, 2020, as well as records regarding any future court hearings were rendered moot by the dismissal of the juvenile dependency proceedings. Indeed, as a result of the hearing appellants ignored, the

juvenile court addressed the Department's failure to provide the records pursuant to the November 2020 order. By failing to raise these issues to the juvenile court when it settled the record, appellants forfeited these contentions on appeal.

E. Other Asserted Errors

Appellants argue the juvenile court abused its discretion by failing to consider and rule on the requests they designated as numbers one through seven in the 827 petition. Regarding request numbers one through five, appellants reiterate the same arguments they made regarding their claim that the court made incorrect factual findings, which we have addressed, *ante*.

In requests six and seven, appellants requested access to, "All ex parte communications relating to this case between any judge assigned to this case at any time and any other person outside the presence of de facto parents or their counsel." Appellants also requested access to "[a]ll juvenile records prepared for any appeal relating to this case." Without citing to the record on appeal, they argue that the juvenile court failed to consider these requests.

Rule 5.552(d)(7) provides, "[i]f, after in camera review and review of any objections, the court determines that all or a portion of the juvenile case file may be accessed, the court must make appropriate orders, *specifying the information that may be accessed* and the procedure for providing access to it." (Italics added.) The rule does not require the juvenile court to specify the information that may not be accessed, and thus it committed no error.

Appellants also requested access to communications "related to this case, or relating to any of the parties in this case" between four specified judges and any other judge assigned to this case during periods wherein the specified judge was disqualified from the matter, or during the pendency of any objection raised by appellants to the specified judge hearing the matter. The juvenile court ruled that there was "no legitimate

basis nor any legal requirement” for such access. On appeal, appellants argue the juvenile court reached this conclusion “without authority,” claiming they have a need for the requested records in order to determine whether any improper communications occurred, as such communications “may constitute legal or ethical violations, and may support potential appellate or other remedies for Appellants.” Appellants do not cite any legal authority compelling release of such information outside of the general scheme of section 827 and rule 5.552. As such, we treat the argument as waived. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

Again, basic appellate principles require that appellants must affirmatively show error to compel reversal, and this court otherwise must presume the correctness of the order. The record shows that the juvenile court engaged in the procedure established in section 827, rules of court and relevant case authorities. The record reflects that the juvenile court conducted an in camera review of the juvenile file and balanced the interests as required under the law to determine what release of juvenile court records was appropriate here. In response to our order to settle the record in appellants’ dependency appeals, the court went to great effort to enumerate exactly what records it released pursuant to appellants’ section 827 petition, and compelled the Department to surrender those documents. Appellants have not shown that the juvenile court abused its discretion.

III. DISPOSITION

The November 24, 2020 order granting access to juvenile courts records under section 827 is affirmed.

Greenwood, P. J.

WE CONCUR:

Lie, J.

Wilson, J.

In re J.C.; Santa Cruz County HSD v. D.S. et al.
H048785